

08/484,394

12-12-05

DAC



PATENT  
12346/46004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : O'Brien et al.  
Patent No. : 5,714,459  
Grant Date : February 3, 1998  
Title : USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDE  
DERIVED THEREFROM  
Assignee : Myelos Corporation

**RECEIVED**

DEC 14 2005

OFFICE OF PETITIONS

Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL LETTER**

Sir:

Please find a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee in Expired Patent Under C.F.R. §1.378(a) and to Reinstate U.S. Patent No. 5,714,459 (the Petition) transmitted herewith for filing in the above-identified patent.

Payment of any required fees have been identified and authorized in the Petition, a duplicate copy of which is enclosed for charging purposes. No additional fees are believed to be due at this time; however, if any additional fee is required, please use Deposit Account No. 11-0600. A duplicate of this transmittal letter is enclosed for that purpose..

Respectfully submitted,

Date: December 8, 2005

Teresa A. Laky  
Teresa A. Laky  
Registration No. 55,352  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
212 425-7200  
212 908-6140 (Direct)  
212 425-5288 (Fax)

1067902

CUSTOMER NO. 26646

EV 320 248 041 US



PATENT  
12346/46004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patentee : O'Brien et al.  
Patent No. : 5,714,459  
Grant Date : February 3, 1998  
Title : USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDE  
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Alexandria, VA 22313-1450

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DEC 14 2005  
**OFFICE OF PETITIONS**

**PETITION TO ACCEPT AN UNAVOIDABLY DELAYED PAYMENT OF A  
MAINTENANCE FEE IN EXPIRED PATENT UNDER 37 C.F.R. §1.378(a) AND TO  
REINSTATE U.S. PATENT NO. 5,714,459**

Sir:

This Petition is submitted to request that the Commissioner accept payment of the maintenance fee for the above-identified patent which was due with a surcharge on February 3, 2002. The delay in payment of the fee was unavoidable as reasonable care was taken to ensure that the maintenance fee was paid timely and this petition is being filed promptly upon notification of the patentee of the expiration of the patent.

**A. The Requirements of a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee**

A petition to accept an unavoidably delayed payment of a maintenance fee under 37 C.F.R. §1.378(a) must be accompanied by:

- (1) the required maintenance fee set forth in §1.20 (e) through (g);
- (2) the surcharge set forth in §1.20(i)(1); and

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- “(3) a showing is made that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition to accept the unavoidably delayed maintenance fee was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Under §1.378 (d), any petition under this section must be filed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

**B. Requirements for a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee Are Met for this Patent**

**(1) The Required Maintenance Fee Set Forth in §1.20 (e) through (g)**

The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 the \$450.00 petition fee set forth in §1.20(e) for the maintenance fee due at 3.5 years for a small entity.

**(2) The Surcharge Set Forth in §1.20(i)(1)**

The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 the \$700.00 surcharge fee after expiration in which late payment is unavoidable.

**(3) The Showing That the Delay Was Unavoidable**

Myelos Corporation (“Myelos”) is the assignee of the entire right and interest in U.S. Patent No. 5,714,459. Myelos Corporation was acquired by Savient Pharmaceuticals, Inc. (“Savient”) (formerly Bio-Technology General Corp.). *See Tab A.* Kenyon & Kenyon is outside patent counsel for Savient.

On April 26<sup>2</sup>, 2005, Kenyon & Kenyon filed a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee in Expired Patent Under 37 C.F.R. § 1.378(a) and to Reinstate U.S. Patent No. 5,714,459 (“the original Petition”) via Express Mail. *See Tab B.* The original Petition set forth the showing required under 37 C.F.R. § 1.378(a) that the delay in paying the issue fee due August 3, 2001 was unavoidable.<sup>1</sup> The original Petition was received by the U.S. Patent Office on April 28, 2005. *See Tab C.*

Kenyon & Kenyon telephoned the Petitions Office of the Patent Office on October 18, 2005 to inquire about the status of the original Petition. Kenyon & Kenyon were unable to access information about the original Petition, however, because its attorneys had not been made of record. Consequently, Kenyon & Kenyon drafted a new Power of Attorney By Assignee of Entire Interest (Revocation of Prior Powers and Appointments of New Power) (“Power of Attorney”). The Power of Attorney was sent to Myelos October 25, 2005. *See Tab D.* Myelos signed and returned the Power of Attorney on October 31, 2005. *See Tab E.* Kenyon & Kenyon filed the Power of Attorney at the Patent Office on November 9, 2005. *See Tab F.*

Kenyon & Kenyon again telephoned the Petitions Office of the U.S. Patent Office on November 18, 2005 to inquire about the status of the original Petition. Kenyon & Kenyon spoke with a Petitions Attorney, who advised them that the Petitions Office had no record of the original Petition and recommended refiling the original Petition and the Power of Attorney. The present petition is submitted in accordance with those instructions. It is respectfully submitted that this petition is being promptly filed after the patentee became aware of the expiration of the patent.

#### **(4) Signature Required Under §1.378 (d)**

This petition is being signed by an attorney registered to practice before the Patent and Trademark Office, as required under §1.378 (d).

In view of the foregoing, attorneys for the assignee earnestly solicit acceptance of the unavoidably delayed maintenance fees and an expeditious reinstatement of U.S. Patent No. 5,714,459.

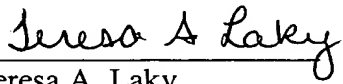
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<sup>1</sup> Please refer to the original Petition for the complete showing of unavoidability.

If a telephone interview would be of assistance in resolving any issue in connection with this Petition, assignee's undersigned attorney invites the Office to telephone at the number provided below.

Respectfully submitted,

Date: December 8, 2005

  
Teresa A. Laky  
Registration No. 55,352  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
212 425-7200  
212 908-6094 (Direct)  
212 425-5288 (Fax)

CUSTOMER NO. 26646

-----BEGIN PRIVACY-ENHANCED MESSAGE-----

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Originator-Name: webmaster@www.sec.gov

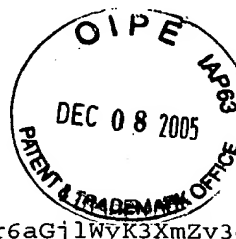
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ACCESSION NUMBER: 0000912057-01-007026

CONFORMED SUBMISSION TYPE: 8-K

PUBLIC DOCUMENT COUNT: 3

CONFORMED PERIOD OF REPORT: 20010221

ITEM INFORMATION:

ITEM INFORMATION:

FILED AS OF DATE: 20010301

RECEIVED

DEC 14 2005

OFFICE OF PETITIONS

FILER:

## COMPANY DATA:

COMPANY CONFORMED NAME:

BIO TECHNOLOGY GENERAL CORP

CENTRAL INDEX KEY:

0000722104

STANDARD INDUSTRIAL CLASSIFICATION:

MEDICINAL CHEMICALS &amp; BOTANI

IRS NUMBER:

133033811

STATE OF INCORPORATION:

DE

FISCAL YEAR END:

1231

## FILING VALUES:

FORM TYPE:

8-K

SEC ACT:

SEC FILE NUMBER:

000-15313

FILM NUMBER:

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STATE:

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BUSINESS PHONE:

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 21, 2001

Bio-Technology General Corp.  
(Exact name of issuer as specified in its charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation)

0-15313  
(Commission File Number)

13-3033811  
(IRS Employer  
Identification No.)

70 Wood Avenue  
Iselin, N.J.  
(Address of Principal Executive Offices)

08830  
(Zip Code)

Registrant's telephone number, including area code: (732) 632-8800

None.  
(Former address, if changed since last report)

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ITEM 5. OTHER EVENTS.

On February 21, 2001 Bio-Technology General Corp. (the "Company") entered into a definitive agreement to acquire Myelos Corporation, a privately held biopharmaceutical company. On February 22, 2001 the Company announced the definitive agreement to acquire Myelos and its results of operations for the quarter and the year ended December 31, 2000. Copies of the press releases announcing the agreement to acquire Myelos Corporation and the Company's results of operations are filed as an exhibit to this report and are hereby incorporated by reference.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements

None.

(b) Pro Forma Financial Information

None.

(c) Exhibits

99.1. Press release of the Company issued on February 22, 2001 relating to the Company's entering into a definitive agreement to acquire Myelos Corporation.

99.2 Press release of the Company issued on February 22, 2001 relating to the Company's fourth quarter and year end earnings.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

BIO-TECHNOLOGY GENERAL CORP.  
(Registrant)

By: /s/ ROBERT SHAW

-----  
Robert Shaw  
Senior Vice President-General Counsel

Dated: February 28, 2001

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EXHIBIT 99.1



## FOR IMMEDIATE RELEASE

## INVESTOR RELATIONS

Don Weinberger  
Wolfe Axelrod Weinberger Associates  
212-370-4500

## CONTACT

Leah Berkovits  
Bio-Technology General Corp.  
732-632-8800

## BIO-TECHNOLOGY GENERAL TO ACQUIRE MYELOS CORPORATION

-- PROMISING NEW DRUG FOR DIABETIC NEUROPATHIC PAIN IN CLINICAL DEVELOPMENT --

Iselin, New Jersey, February 22, 2001 -- Bio-Technology General Corp. (NASDAQ:BTGC) today announced it has entered into a definitive agreement to acquire Myelos Corporation, a privately-held biopharmaceutical company focused on the development of novel therapeutics to treat diseases of the nervous system.

Myelos' technology platform enables the isolation of stimulatory peptides (short chains of amino acids) derived from growth factors. This has led to the development of Prosaptide-TM-, a promising new compound for the treatment of neuropathic pain associated with diabetic peripheral neuropathy. A Phase II human clinical trial in Type I and Type II diabetes mellitus already completed by Myelos demonstrated that Prosaptide effectively decreases pain associated with diabetic peripheral neuropathy without deleterious side effects.

Diabetic peripheral neuropathy is a serious and debilitating complication of Type I and Type II diabetes mellitus that usually affects the feet and legs. Symptoms include pain, numbness, and tingling. An estimated 8.8 million diabetics have peripheral neuropathy, while approximately 2.6 million of them have been diagnosed and are symptomatic. Due to the fact that available treatment options for pain associated with diabetic peripheral neuropathy are often unsatisfactory and frequently accompanied by unacceptable side effects, only approximately one-third of

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patients who are diagnosed and symptomatic are currently treated. BTG believes that the annual worldwide market potential for Prosaptide in the treatment of diabetic neuropathic pain may be in excess of \$800 million.

Moreover, in a series of animal studies, Prosaptide was shown to not only alleviate peripheral neuropathic pain but also to reverse the underlying neuropathy, thereby inducing neuronal regeneration and preventing neuronal death. The data from these studies strongly suggest that if these findings are replicated in human clinical trials, there may well be additional potential for Prosaptide in the treatment of diabetic peripheral neuropathy, over and above its demonstrated ability to decrease neuropathic pain. No approved drugs are available to prevent or reverse the neuropathy itself.

Under the terms of the agreement, BTG will pay Myelos stockholders \$35 million in a combination of cash and stock (\$14 million in cash and \$21 million in equity (approximately 2.3 million shares of common stock)). As a result of the transaction, shares outstanding will increase by approximately 4%. Despite this increase in shares, BTG should be able to achieve EPS growth in 2001 over 2000. The shares being issued to Myelos are unregistered. Although BTG has agreed to register the shares under the Securities Act, each principal stockholder of Myelos has agreed to limit their sale of BTG shares in any three-month period. This lockup agreement expires after two years.

An additional future payment of \$30 million in a combination of cash and stock is contingent upon BTG being in position to file a New Drug Application for FDA approval of Prosaptide in the treatment of neuropathic pain. A final payment of 15% of worldwide net sales in the third year of commercialization will be made in a combination of cash and stock. The consummation of the acquisition is subject to customary closing conditions including approval by the stockholders of Myelos. The Company expects to close the acquisition during March 2001.

Sim Fass, Chairman and CEO of Bio-Technology General Corp., stated: "The acquisition of Myelos enhances our prospects for future growth by the addition of an exciting proprietary product with large market potential to our pipeline of drugs in development. Based on the data

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from Myelos' pre-clinical and clinical program, we believe that Prosaptide is a drug that can make a much-needed contribution to the treatment of diabetic peripheral neuropathy, and that it may one day prove to be effective in the treatment of peripheral neuropathy associated with other medical conditions. In addition, beyond Prosaptide's potential, the Myelos technology platform could lead to the development of new peptides to treat other diseases of the nervous system."

Bio-Technology General Corp., a leading biopharmaceutical company, develops, manufactures and markets genetically engineered and other products for human health care. BTG's products are marketed worldwide. Products sold in the United States are Oxandrin-Registered Trademark- (oxandrolone, USP), marketed by BTG and by the Ross Products Division of Abbott Laboratories under a co-marketing agreement, Delatestryl-Registered Trademark- (testosterone enanthate), marketed by BTG, Mircette-TM- (oral contraceptive), marketed by Organon, Inc., and BioLon-TM- (sodium hyaluronate), marketed by Akorn, Inc. Products sold internationally are Bio-Tropin-TM- (recombinant human growth hormone), BioLon-TM- (sodium hyaluronate), Bio-Hep-B-TM- (hepatitis B vaccine), and Silkis-Registered Trademark- (vitamin D derivative).

BTG's news releases and other information are available on the Company's website at [www.btgc.com](http://www.btgc.com).

BTG will be offering a live webcast of a discussion by BTG management of the earnings and the Company's business on Thursday, February 22, 2001, at 10:30 a.m. (EST). The webcast can be accessed by going to BTG's website at [www.btgc.com](http://www.btgc.com). It will be archived and available after the discussion via our website through March 1, 2001. A replay will also be available for one week by calling 888-203-1112 (US) or 719-457-0820 (from overseas), passcode 771458.

####

STATEMENTS IN THIS NEWS RELEASE CONCERNING THE COMPANY'S BUSINESS OUTLOOK OR FUTURE ECONOMIC PERFORMANCE; ANTICIPATED PROFITABILITY, REVENUES, EXPENSES OR OTHER FINANCIAL ITEMS; AND STATEMENTS CONCERNING ASSUMPTIONS MADE OR EXPECTATIONS AS TO ANY FUTURE EVENTS, CONDITIONS, PERFORMANCE OR OTHER MATTERS, ARE "FORWARD-LOOKING STATEMENTS" AS THAT TERM IS DEFINED UNDER THE FEDERAL SECURITIES LAWS. FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS, UNCERTAINTIES AND OTHER FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE STATED IN SUCH STATEMENTS. SUCH RISKS, UNCERTAINTIES AND FACTORS INCLUDE, BUT ARE NOT LIMITED TO, CHANGES AND DELAYS IN PRODUCT DEVELOPMENT PLANS AND SCHEDULES, CUSTOMER ACCEPTANCE OF NEW PRODUCTS, CHANGES IN PRICING OR OTHER ACTIONS BY COMPETITORS, PATENTS OWNED BY THE

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COMPANY AND ITS COMPETITORS, AND GENERAL ECONOMIC CONDITIONS, AS WELL AS OTHER RISKS DETAILED IN THE COMPANY'S FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION.

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EXHIBIT 99.2

FOR IMMEDIATE RELEASE

## INVESTOR RELATIONS

Don Weinberger

Wolfe Axelrod Weinberger Associates

212-370-4500

## CONTACT

Leah Berkovits

Bio-Technology General Corp.

732-632-8800

BIO-TECHNOLOGY GENERAL CORP. REPORTS FOURTH QUARTER  
AND FISCAL YEAR 2000 EARNINGS RESULTS

-- DEMAND FOR OXANDRIN GROWING THROUGH ABBOTT CO-MARKETING ACTIVITY --

Iselin, NJ, February 22, 2001 -- Bio-Technology General Corp. (NASDAQ:BTGC) today announced its earnings and financial results for the fourth quarter and full year 2000.

Net income for the fourth quarter of 2000 was \$4.8 million, or \$0.09 per share, compared to a net loss of \$2.0 million, or \$0.04 per share, in the fourth quarter of 1999. Total revenues for the fourth quarter of 2000 grew 49% to \$21.9 million from \$14.7 million in the comparable quarter of 1999. Revenues from product sales in the fourth quarter of 2000 increased 43% to \$17.4 million, compared to \$12.2 million in the fourth quarter of 1999.

Year-to-year fourth quarter sales of Oxandrin-Registered Trademark- grew 88%, reflecting the resumption, in June 2000 (following a period of inventory reduction), of purchases of Oxandrin by Gentiva, BTG's distributor, matching Gentiva's sales to pharmacies and distribution outlets.

Year-to-year fourth quarter sales of human growth hormone grew 176% due to seasonal variations in orders from BTG's licensees.

Sales of BioLon-TM- and Delatestryl-Registered Trademark- in the fourth quarter of 2000, declined by 25% and 69%, respectively, compared to the fourth quarter of 1999. Gentiva reduced its purchases of Delatestryl

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in anticipation of the reintroduction of a competitor's product. BioLon sales decreased as BTG halted shipments of the product to the United States pending approval of a supplemental application relating to an upgrade in BTG's manufacturing process to conform it to a higher standard of quality implemented by BTG. This resulted in a back order of the product in the United States at the end of 2000.

Expenses decreased 12% from \$18.8 million in the fourth quarter of 1999 to \$16.7 million in the fourth quarter of 2000. This decrease was primarily due to the write-off in 1999 of a previously capitalized expense.

Income for the year ended December 31, 2000, before cumulative effect of change in accounting principle related to contract revenues recognized in prior periods, was \$15.9 million, or \$0.28 per share in 2000, compared to \$13.9 million, or \$0.26 per share in 1999. Total revenues were \$84.9 million in 2000, compared to \$85.3 million in 1999. Revenues from product sales were \$62.1 million, compared to \$62.3 million in 1999. Sales of Oxandrin and human growth hormone in 2000 increased 29% and 14%, respectively, over 1999. The increase in Oxandrin sales in 2000 was partly due to an inventory reduction process completed in the first half of 2000. These sales revenues were largely offset by a reduction in sales of Delatestryl and BioLon, for the reasons noted above.

Expenses decreased 3% from \$66.6 million in 1999 to \$64.6 million in 2000. Expense decreases of 10% and 12% were recorded in general and administrative and cost of product sales, respectively. General and administrative expense was lower largely because a write-off of a previously capitalized expense is reflected in the 1999 numbers. Cost of product sales was lower because of a reduction in sales of products with high cost of goods, relative to total sales. Marketing and sales and research and development expense each increased by 6%.

#### ABBOTT LABORATORIES - OXANDRIN CO-MARKETING RELATIONSHIP

Commenting on the results, Sim Fass, Chairman and CEO of BTG, stated: "Prescriptions for Oxandrin grew 3% in the fourth quarter of 2000 compared to the third quarter of 2000. However, we are pleased to report that 2001 has begun on a highly promising note, with demand for Oxandrin growing significantly. In late 2000, the Ross Products Division of Abbott

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Laboratories (NYSE:ABT) launched Oxandrin, through its nutritional support products specialty sales force, under a co-marketing agreement with BTG. In January 2001, prescriptions for Oxandrin increased by 36% compared to December 2000, and by 48% compared to January 2000. We are excited by this indication that Oxandrin is now reaching many more individuals with involuntary weight loss and we believe that if the broader market penetration we are now seeing is sustained, Oxandrin will achieve even greater commercial success."

#### ANTICIPATED DEVELOPMENTS IN 2001

As also announced today, BTG has entered into a definitive agreement to acquire Myelos Corporation, a privately-held biopharmaceutical company focused on the development of novel therapeutics to treat diseases of the nervous system. The consummation of the acquisition is anticipated to occur during March 2001.

The Myelos technology platform has led to the development of Prosaptide-TM-, a promising new compound for the treatment of neuropathic pain associated with diabetic peripheral neuropathy. BTG plans to initiate a Phase II(b) clinical trial of Prosaptide in 2001 to supplement the findings of an earlier Phase II clinical trial of the product completed by Myelos.

## OTHER ANTICIPATED DEVELOPMENTS IN 2001:

- - Increase in Oxandrin-Registered Trademark-sales via the co-marketing relationship with Abbott
- - Launch of BioHy-TM- (Europe), a royalty-bearing osteoarthritis product, by DePuy Orthopaedics Inc., a Johnson & Johnson company
- - Additional launches of Silkis-Registered Trademark- (Europe, Latin America), a royalty-bearing psoriasis product, by Galderma
- - Approval and launch of recombinant human insulin (Poland/Eastern Europe), by Ibatech
- - Fibrimage-TM- - completion by Draxis of Phase III clinical study in the detection of deep vein thrombosis
- - Puricase-TM- - initiation of Phase I clinical study in gout
- - Anti-leukemia agent - completion of pre-clinical program in preparation for Phase I clinical study

Bio-Technology General Corp., a leading biopharmaceutical company, develops, manufactures and markets genetically engineered and other products for human health care. BTG's products are marketed worldwide. Products sold in the United States are Oxandrin-Registered Trademark- (oxandrolone, USP), marketed by BTG and by the Ross Products Division of Abbott Laboratories under a co-marketing agreement, Delatestryl-Registered Trademark- (testosterone enanthate), marketed by BTG, Mircette-TM- (oral

<PAGE>

contraceptive), marketed by Organon, Inc., and BioLon-TM- (sodium hyaluronate), marketed by Akorn, Inc. Products sold internationally are Bio-Tropin-TM- (recombinant human growth hormone), BioLon-TM- (sodium hyaluronate), Bio-Hep-B-TM- (hepatitis B vaccine), and Silkis-Registered Trademark- (vitamin D derivative).

BTG's news releases and other information are available on the Company's website at [www.btgc.com](http://www.btgc.com).

BTG will be offering a live webcast of a discussion by BTG management of the earnings and the Company's business on Thursday, February 22, 2001, at 10:30 a.m. (EST). The webcast can be accessed by going to BTG's website at [www.btgc.com](http://www.btgc.com). It will be archived and available after the discussion via our website through March 1, 2001. A replay will also be available for one week by calling 888-203-1112 (US) or 719-457-0820 (from overseas), passcode 771458.

ALL EARNINGS-PER-SHARE AMOUNTS IN THE TEXT OF THIS NEWS RELEASE REPRESENT DILUTED EARNINGS PER SHARE AS DEFINED UNDER STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 128, "EARNINGS PER SHARE."

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STATEMENTS IN THIS NEWS RELEASE CONCERNING THE COMPANY'S BUSINESS OUTLOOK OR FUTURE ECONOMIC PERFORMANCE; ANTICIPATED PROFITABILITY, REVENUES, EXPENSES OR OTHER FINANCIAL ITEMS; AND STATEMENTS CONCERNING ASSUMPTIONS MADE OR EXPECTATIONS AS TO ANY FUTURE EVENTS, CONDITIONS PERFORMANCE OR OTHER MATTERS, ARE "FORWARD-LOOKING STATEMENTS" AS THAT TERM IS DEFINED UNDER THE FEDERAL SECURITIES LAWS. FORWARD-LOOKING STATEMENTS ARE SUBJECT TO RISKS, UNCERTAINTIES AND OTHER FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE STATED IN SUCH STATEMENTS. SUCH RISKS, UNCERTAINTIES AND FACTORS INCLUDE, BUT ARE NOT LIMITED TO, CHANGES AND DELAYS IN PRODUCT DEVELOPMENT PLANS AND SCHEDULES, CUSTOMER ACCEPTANCE OF NEW PRODUCTS, CHANGES IN PRICING OR OTHER ACTIONS BY COMPETITORS, PATENTS OWNED BY THE COMPANY AND ITS COMPETITORS, AND

GENERAL ECONOMIC CONDITIONS, AS WELL AS OTHER RISKS DETAILED IN THE COMPANY'S FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION.

## TABLE TO FOLLOW

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BIO-TECHNOLOGY GENERAL CORP. AND SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF OPERATIONS  
 (IN THOUSANDS EXCEPT PER SHARE DATA)

&lt;TABLE&gt;

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Revenues:		
Product sales	\$ 17,354	\$ 12,168
Contract fees	463	39
Royalties	981	644
Other	762	414
Interest	2,321	1,465
	-----	-----
Total revenues	21,881	14,730
	-----	-----
Expenses:		
Research and development	5,892	5,731
Cost of product sales	2,790	2,237
General and administrative	2,526	5,213
Marketing and sales	4,678	4,817
Other	764	834
	-----	-----
Total expenses	16,650	18,832
	-----	-----
Income (loss) before income taxes	5,231	(4,102)
Income tax expense (benefit)	438	(2,068)
	-----	-----
Net income (loss)	\$ 4,793	\$ (2,034)
	=====	=====
Earnings (loss) per common share:		
Basic	\$ 0.09	\$ (0.04)
	=====	=====
Diluted	\$ 0.09	\$ (0.04)
	=====	=====
Weighted average number of shares outstanding:		
Basic	54,729	52,891
	=====	=====

Diluted

55,779

55,690

=====

=====

&lt;/TABLE&gt;

\*BTG adopted the Securities and Exchange Commission's Staff Accounting Bulletin No. 101 on Revenue Recognition in the fourth quarter of 2000, effective January 1, 2000, and recorded a cumulative effect of change in accounting principle related to contract revenues recognized in prior periods. The related revenue is being recognized over the terms of the agreements.

&lt;PAGE&gt;

CONSOLIDATED STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE DATA)

&lt;TABLE&gt;

&lt;CAPTION&gt;

	Year Ended D
	-----
	2000*
	-----
<S>	<C>
Revenues:	
Product sales	\$ 62,149
Contract fees	10,229
Royalties	3,139
Other	1,931
Interest	7,496
	-----
Total revenues	84,944
	-----
Expenses:	
Research and development	22,360
Cost of product sales	9,887
General and administrative	12,685
Marketing and sales	17,614
Other	2,028
	-----
Total expenses	64,574
	-----
Income before income taxes	20,370
Income taxes	4,475
	-----
Income before cumulative effect of change in accounting principle	15,895
Cumulative effect of change in accounting principle	8,178
	-----
Net income	\$ 7,717
	=====
Earnings per common share:	
Basic:	
Income before cumulative effect of change in accounting principle	\$ 0.29
	=====
Cumulative effect of change in accounting principle	\$ 0.15

Net income	=====
	\$ 0.14
	=====

## Diluted:

Income before cumulative effect of change in accounting principle	=====
	\$ 0.28
	=====

Cumulative effect of change in accounting principle	=====
	\$ 0.14
	=====

Net income	=====
	\$ 0.14
	=====

Weighted average number of common  
and common equivalent shares:

Basic	54,320
	=====

Diluted	56,885
	=====

&lt;/TABLE&gt;

\*BTG adopted the Securities and Exchange Commission's Staff Accounting Bulletin No. 101 on Revenue Recognition in the fourth quarter of 2000, effective January 1, 2000, and recorded a cumulative effect of change in accounting principle related to contract revenues recognized in prior periods. The related revenue is being recognized over the terms of the agreements.

&lt;/TEXT&gt;

&lt;/DOCUMENT&gt;

&lt;/SEC-DOCUMENT&gt;

-----END PRIVACY-ENHANCED MESSAGE-----



SN2E9EH872E73

EV321843637US

Case No. 12341646004 Atty. Encl  
Ser. No. 5714459 Due Date 126105

The Impressed Mail Room date stamp acknowledges receipt of the  
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|--|--|
| <input type="checkbox"/> Application         | <input type="checkbox"/> Extension Request |
| <input type="checkbox"/> Amendment           | <input type="checkbox"/> Priority Document |
| <input type="checkbox"/> Assignment          | <input type="checkbox"/> Issue Fee         |
| <input type="checkbox"/> Notice of Appeal    | <input type="checkbox"/> Declaration       |
| <input type="checkbox"/> Prior Art Statement | <input type="checkbox"/> Small Entity      |
| <input type="checkbox"/> Appeal Brief        | <input type="checkbox"/> Declaration       |

Return to accept unincorporated payment of 11  
Priority Fee in expired Patent  
Main Patent Fee Remitted 10/11/2001  
Copy of Patent Letter dated 10/11/2001  
Data Sheet

B



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patentee : O'Brien et al.  
Patent No. : 5,714,459  
Grant Date : February 3, 1998  
Title : USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDE  
DERIVED THEREFROM  
Assignee : Myelos Corporation

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**CHANGE OF CORRESPONDENCE ADDRESS NOTIFICATION**

S I R:

Please direct all future communications regarding this application to:

Donna M. Praiss  
KENYON & KENYON  
One Broadway  
New York, New York 10004  
telephone: 212-425-7200  
facsimile: 212-425-5288  
**CUSTOMER NO. 26646**

The previous address of record was:

KNOBBE, MARTENS, OLSON & BEAR, LLP  
620 Newport Center Drive  
16<sup>th</sup> Floor  
Newport Beach, CA 92660

If a telephone interview would be of assistance in resolving any issue in connection with this Change of Correspondence Address Notification, assignee's undersigned attorney invites the Office to telephone at the number provided below.

Respectfully submitted,

Date: April 26, 2005

*Elizabeth M. Wieckowski*  
Elizabeth M. Wieckowski  
Registration No. 42,226  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
212 425-7200  
212 908-6140 (Direct)  
212 425-5288 (Fax)  
**CUSTOMER NO. 26646**

PATENT  
12346/46004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patentee : O'Brien et al.  
Patent No. : 5,714,459  
Grant Date : February 3, 1998  
Title : USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDE  
DERIVED THEREFROM  
Assignee : Myelos Corporation

Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL LETTER**

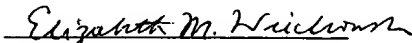
Sir:

Please find a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee in Expired Patent Under C.F.R. §1.378(a) and to Reinstate U.S. Patent No. 5,714,459 (the Petition) transmitted herewith for filing in the above-identified patent.

Payment of any required fees have been identified and authorized in the Petition, a duplicate copy of the Petition is enclosed for charging purposes. No additional fees are believed to be due at this time, however if any additional fee is required, please use Deposit Account No. 11-0600. A duplicate of this transmittal letter is enclosed for that purpose.

Respectfully submitted,

Date: April 26, 2005

  
Elizabeth M. Wieckowski  
Registration No. 42,226  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
212 425-7200  
212 908-6140 (Direct)  
212 425-5288 (Fax)  
CUSTOMER NO. 26646

Express Mail No EV 321 843 637 US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patentee : O'Brien et al.  
Patent No. : 5,714,459  
Grant Date : February 3, 1998  
Title : USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDE  
DERIVED THEREFROM  
Assignee : Myelos Corporation

Mail Stop Petition  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO ACCEPT AN UNAVOIDABLY DELAYED PAYMENT OF A  
MAINTENANCE FEE IN EXPIRED PATENT UNDER 37 C.F.R. §1.378(a) AND TO  
REINSTATE U.S. PATENT NO. 5,714,459**

Sir:

This Petition is submitted to request that the Commissioner accept payment of the maintenance due in the above-identified patent which was due with a surcharge on February 3, 2002. The delay in payment of the fee was unavoidable as reasonable care was taken to ensure that the maintenance fee was paid timely and this petition is being filed promptly upon notification of the patentee of the expiration of the patent.

**A. The Requirements of a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee**

A petition to accept an unavoidably delayed payment of a maintenance fee under 37 C.F.R. §1.378(a) must be accompanied by:

- (1) the required maintenance fee set forth in §1.20 (e) through (g);
- (2) the surcharge set forth in §1.20(i)(1); and

- (3) a showing is made that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition to accept the unavoidably delayed maintenance fee was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Under §1.378 (d), any petition under this section must be filed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

**B. Requirements for a Petition to Accept an Unavoidably Delayed Payment of a Maintenance Fee Are Met for this Patent**

**(1) The Required Maintenance Fee Set Forth in §1.20 (e) through (g)**

The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 the \$450.00 petition fee set forth in §1.20(e) for the maintenance fee due at 3.5 years for a small entity.

**(2) The Surcharge Set Forth in §1.20(i)(1)**

The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 the \$700.00 surcharge fee after expiration in which late payment is unavoidable.

**(3) The Showing That the Delay Was Unavoidable**

**(a) Reasonable Care Was Taken to Ensure That the Maintenance Fee Would Be Paid Timely**

Myelos Corporation ("Myelos") is a wholly owned subsidiary of Savient Pharmaceuticals, Inc., formerly known as Bio-Technology General Corp. ("BTG"). Myelos is the assignee of the entire right and interest in U.S. Patent No. 5,714,459. BTG acquired

Myelos Corporation on March 19, 2001 through BTG-owned Myls Acquisition Corp. Myelos Corporation merged with and into Myls Acquisition Corp.

Knobbe Martens, Olson & Bear, LLP ("Knobbe") of Newport Beach, California was the outside patent counsel for Myelos. As part of the above transactions within BTG, responsibility for the patent portfolio of Myelos was transferred to Kenyon & Kenyon and BTG (as Savient was known). On or about October 25, 2001, the physical files that constituted the entire<sup>1</sup> Myelos patent portfolio were transferred to Kenyon & Kenyon in New York, New York from Knobbe. The Myelos patent portfolio included 81 issued Myelos patents and patent applications.

Upon receipt, each of the Myelos files were reviewed by Kenyon & Kenyon for outstanding deadlines and docketed. The transferred file for issued U.S. Patent No. 5,714,459 contained a status summary sheet dated October 22, 2001, which was designated by Knobbe as case number MYELOS.002DV2. *See Tab 1.* The status sheet indicated that the 3.5 year maintenance fee had been paid. Specifically, for a deadline of 03-Aug-2001, the status sheet indicated that action was taken on 02-Aug-2001. (Emphasis added)

The transferred file also contained a Maintenance Renewal Reminder mailed to Knobbe on August 28, 2001, which was docketed on September 24, 2001 for a 3 ½ year maintenance fee with surcharge due February 3, 2002. The back of the reminder had two date stamps "Received, Newport Beach, Docketing, Sep 20 2001, Knobbe, Martens, Olson & Bear, LLP" and "Received, San Diego, Docketing, Oct 01 2001, Knobbe, Martens, Olson & Bear, LLP." *See Tab 2.*

The file did not contain any correspondence from Knobbe to indicate that the 3.5 year maintenance fee had not been paid and was still outstanding at the time the file was transferred to Kenyon & Kenyon.

In addition, just before the transfer of the Myelos patent portfolio to BTG's outside patent counsel Kenyon & Kenyon, Robert M. Shaw (former patent counsel of BTG) sent a letter to Kenyon & Kenyon, which enclosed letters from the Knobbe law firm to BTG pertaining to various Myelos patent applications to which BTG has not yet responded. *See Tab 3.* One of the attached letters is the first page of a letter dated September 7, 2001 from

---

<sup>1</sup> One file was transferred at a later date.

Eric S. Furman, Ph.D. of Knobbe to Robert Shaw requesting instructions for the payment of the maintenance fee for U.S. Patent No. 5,714,459 on which is handwritten "**Paid**". See **Tab 4**. This letter also apprised Kenyon & Kenyon that the maintenance fee had been paid by October 11, 2001, *i.e.*, before the file was transferred from Knobbe.

Based on the understanding that the maintenance fee had been paid, Kenyon & Kenyon docketed a deadline for the 7.5 year maintenance fee (also referred to as the 8<sup>th</sup> year annuity), which is due on August 3, 2005. A copy of the pertinent records maintained by Kenyon & Kenyon are attached hereto. See **Tab 5**. A copy of the Patent Jacket Data Sheet, which is attached to the file, indicates that the 8 year annuity is due 03-Aug-2005. See **Tab 6**.

Thus, it is respectfully submitted that reasonable care was taken to ensure timely payment of the maintenance fee for this patent.

**(b) Promptly Filing of Petition after the Patentee Was Notified of, or Otherwise Became Aware of, the Expiration of the Patent**

From the time of transfer of the Myelos patent portfolio to about December 2003, Robert M. Shaw, Esq., the former Senior Vice President, General Counsel and Secretary of BTG, in Iselin, New Jersey, provided instructions to Kenyon & Kenyon on matters relating to Myelos. Since about December 2003, Bio-Technology General (Israel) Ltd. ("BTGIL"), the Israeli subsidiary of Bio-Technology General Corp. ("BTG"), has been responsible for providing instructions to Kenyon & Kenyon for patent prosecution matters relating to Myelos.

Savient is presently undergoing an internal reorganization. The reorganization is expected to be completed by June/July 2005. As part of this reorganization, responsibility for the Myelos patent prosecution files, currently handled by BTGIL, will be transferred to Savient. In preparation for this internal transfer, BTGIL is in the process of summarizing upcoming deadlines for the Myelos patents and preparing files for shipment to Savient. In connection with this preparation, on March 31, 2005, Bio-Technology General (Israel) Ltd (BTGIL) in Rehovot, Israel learned from the U.S. PTO website that the above-referenced patent was apparently abandoned for failure to pay the 3.5 year maintenance fee (also referred to as the 4<sup>th</sup> year maintenance fee) which was due by August 2, 2001. Gail Volman Ph.D., of the Intellectual Property Department of BTGIL informed the undersigned, an associate of Kenyon & Kenyon, of the lapsed patent on the same day.



The undersigned advised the docket department of Kenyon & Kenyon and other attorneys and paralegals either previously or currently involved in Myelos matters of Dr. Volman's notification of the expiration of the patent on the same day. An investigation was immediately undertaken to determine the facts surrounding the 3.5 year renewal fee.

Kenyon & Kenyon contacted the Knobbe law firm to determine whether it had received any correspondence from the U.S. PTO relating to expiration of the '459 patent. On April 22, 2005, Dr. Eric Furman of Knobbe advised the undersigned that there is no record of receipt by Knobbe of a notice of expiration from the U.S. PTO. Further, under standard Knobbe procedures, Knobbe would have forwarded any correspondence relating to a transferred file to the new patent counsel, *i.e.*, Kenyon & Kenyon. Since Knobbe did not receive any correspondence from the U.S. PTO indicating that the '459 patent had expired, Knobbe did not send any correspondence to Kenyon & Kenyon relating to the '459 patent after the physical file for this patent had been transferred. In the absence of any notification that the '459 patent had expired until the assignee learned of its expiration and notified Kenyon & Kenyon, the payment of the maintenance fee was unavoidably delayed.

It is respectfully submitted that this petition is being promptly filed after the patentee, became aware of the expiration of the patent. In the present case, the assignee became aware of the expired patent and immediately notified Myelos' outside patent counsel.

**(4) Signature Required Under §1.378 (d)**

This petition is being signed by an attorney registered to practice before the Patent and Trademark Office, as required under §1.378 (d).

In view of the foregoing, attorneys for the assignee earnestly solicit acceptance of the unavoidably delayed maintenance fee and an expeditious reinstatement of U.S. Patent No. 5,714,459.

If a telephone interview would be of assistance in resolving any issue in connection with this Petition, assignee's undersigned attorney invites the Office to telephone at the number provided below.

Respectfully submitted,

Date: April 26, 2005

Elizabeth M. Wieckowski  
Elizabeth M. Wieckowski  
Registration No. 42,226  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
212 425-7200  
212 908-6140 (Direct)  
212 425-5288 (Fax)

CUSTOMER NO. 26646

NY01 978344

Case Number: **MYELOS.002DV2**

Country: US United States of America

NP Instr. Date:

Case Type: DIV

SubCase:

Status: **ISSUED**

#1

Application Number: 08/484594

Filing Date: 07-Jun-1995

Patent Number: 5714459

Issue Date: 03-Feb-1998

Publication Number:

PublicationDate:

Expir. Date: 30-Jul-2013

Entity: SE

AbandonedDate:

Agent:

Client: MYELOS

Prosecuting

Agent Ref#:

Tax Due Date:

Priority Date:

Annuity Number:

BarCodeDate:

Priority Number:

Tax Start Date:

Assignee: MYELOS CORPORATION

Inventors: O'BRIEN, JOHN S.

Invention Attorney(s): NAI

KISHIMOTO, YASUO

Title: USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDES DERIVED THEREFROM

Remarks:

User ID:

Date Created: 16-Jun-2000

Last Update: 13-Feb-1998

**List Of User Actions**

Action(s) Due	Due Date	Indicator	Action Taken
11 1/2 GRACE PR	03-Feb-2010	Final	
Tax 11.5	03-Aug-2009	Due Date	
11 1/2 YR L/C	03-Feb-2009	Reminder	
7.5 GRACE PER.	03-Feb-2006	Final	
Tax 7.5	03-Aug-2005	Due Date	
7 1/2 YR. L/C	03-Feb-2005	Reminder	
3.5 GRACE PER.	03-Feb-2002	Final	
Tax 3.5	03-Aug-2001	Due Date	02-Aug-2001
US-ASSIGNMENT Follow Up Date	15-Mar-2001	Due Date	15-Sep-2000
3 1/2 YR. L/C	03-Feb-2001	Reminder	
ASSIGN REC'D?	13-Nov-2000	Due Date	15-Sep-2000
POSTCARD REC'D?	13-Oct-2000	Reminder	15-Sep-2000
REISSUE APP DUE	03-Feb-2000	Final	03-Feb-2000
*L/C REISSUE AP	03-Aug-1999	Reminder	03-Aug-1999
PAT PROOFREAD	30-Jun-1999	Due Date	
Action Status Chk:	01-Oct-1998	Due Date	01-Oct-1998
Action Status Chk:	03-Aug-1998	Due Date	03-Aug-1998
Action Status Chk:	16-Jul-1998	Due Date	16-Jul-1998
Action Status Chk:	15-Jul-1998	Due Date	15-Jul-1998
Action Status Chk:	24-Apr-1998	Due Date	24-Apr-1998
Action Status Chk:	21-Apr-1998	Due Date	21-Apr-1998
ASSIGNMENT REC	16-Apr-1998	Reminder	31-Mar-1998
Action Status Chk:	09-Apr-1998	Due Date	09-Apr-1998
I/F RECEIPT	09-Apr-1998	Reminder	15-Jan-1998
POSTCARD REC'D	17-Mar-1998	Reminder	31-Mar-1998

Action Status Chk:	08-Mar-1998	Due Date	08-Mar-1998
F/D 3 MONTH EXT	03-Mar-1998	Final	09-Oct-1997
F/D 2 MONTH EXT	03-Feb-1998	Reminder	09-Oct-1997
RESUBMIT ASSIGN	14-Jan-1998	Final	16-Jan-1998
F/D 1 MONTH EXT	03-Jan-1998	Reminder	09-Oct-1997
POSTCARD REC'D	09-Dec-1997	Reminder	15-Jan-1998
POSTCARD REC'D	08-Dec-1997	Reminder	21-Oct-1997
Action Status Chk:	04-Dec-1997	Due Date	04-Dec-1997
Action Status Chk:	04-Dec-1997	Due Date	04-Dec-1997
FORMAL DWGS DUE	03-Dec-1997	Due Date	09-Oct-1997
ISSUE FEE DUE	03-Dec-1997	Final	09-Oct-1997
ASSIGNMENT REC	28-Nov-1997	Reminder	24-Oct-1997
POSTCARD REC'D	27-Oct-1997	Reminder	24-Oct-1997
POSTCARD REC'D	13-Oct-1997	Reminder	03-Feb-1998
STATORY PERIOD	04-Sep-1997	Final	04-Jun-1997
STATUTORY PERIO	04-Sep-1997	Final	08-Sep-1997
APPEAL 2ND EXT	04-Aug-1997	Reminder	08-Sep-1997
APPEAL 2ND EXT	04-Aug-1997	Reminder	04-Jun-1997
POSTCARD REC'D	03-Aug-1997	Reminder	04-Jun-1997
APPEAL 1ST EXT	04-Jul-1997	Reminder	08-Sep-1997
APPEAL 1ST EXT	04-Jul-1997	Reminder	04-Jun-1997
Action Status Chk:	09-Jun-1997	Due Date	09-Jun-1997
NOTICE APPEAL	04-Jun-1997	Due Date	08-Sep-1997
NOTICE APPEAL	04-Jun-1997	Due Date	04-Jun-1997
Action Status Chk:	19-May-1997	Due Date	19-May-1997
FINAL AMEND DUE	04-May-1997	Due Date	04-Jun-1997
AMEND. 3RD EXT.	22-Jan-1997	Final	19-Nov-1996
AMEND. 2ND EXT	22-Dec-1996	Reminder	19-Nov-1996
POSTCARD REC'D	10-Dec-1996	Reminder	09-Dec-1996
AMEND. 1ST EXT	22-Nov-1996	Reminder	19-Nov-1996
AMENDMENT DUE	22-Oct-1996	Due Date	19-Nov-1996
Action Status Chk:	04-Sep-1996	Due Date	04-Sep-1996
STATUS CK	07-Jun-1996	Due Date	07-Jun-1996
POSTCARD REC'D	13-May-1996	Reminder	04-Mar-1996
Action Status Chk:	13-Mar-1996	Due Date	13-Mar-1996
Action Status Chk:	22-Feb-1996	Due Date	22-Feb-1996
Action Status Chk:	17-Feb-1996	Due Date	17-Feb-1996
Action Status Chk:	07-Feb-1996	Due Date	07-Feb-1996
FINAL MSNG PRS	25-Dec-1995	Final	17-Aug-1995
MISS PART 3 EXT	25-Nov-1995	Reminder	17-Aug-1995
ASSIGNMENT REC	17-Nov-1995	Reminder	
POSTCARD REC'D	17-Nov-1995	Reminder	13-Sep-1995
POSTCARD REC'D	26-Oct-1995	Reminder	22-Aug-1995
MISS PART 2 EXT	25-Oct-1995	Reminder	17-Aug-1995
MISS PART 1 EXT	25-Sep-1995	Reminder	17-Aug-1995
POSTCARD REC'D	16-Sep-1995	Reminder	

# Country Application

Monday, October 22, 2001

FILING RECEIPT	07-Sep-1995	Reminder	07-Aug-1995
IDS	07-Sep-1995	Due Date	07-Sep-1995
MISSING PARTS	25-Aug-1995	Due Date	17-Aug-1995
POSTCARD REC'D	17-Jul-1995	Reminder	07-Aug-1995

NAI



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Patent and Trademark Office

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620 NEWPORT CENTER DRIVE  
SIXTEENTH FLOOR  
NEWPORT BEACH CA 92660

### MAINTENANCE FEE REMINDER

According to the records of the Patent and Trademark Office, the maintenance fee for the Patent(s) listed below, for which the above address is of record as the fee address under CFR 1.363 has not been paid within the six-month period set forth in 37 CFR 1.362(d). THE MAINTENANCE FEE MAY STILL BE PAID WITH THE APPLICABLE SURCHARGE SET FORTH IN 37 CFR 1.20(k) or (l), WITHIN THE SIX-MONTH GRACE PERIOD SET FORTH IN 37 CFR 1.362(e).

Each patent for which the applicable maintenance fee is not paid to the Patent and Trademark Office on or before the date the fee is due or within the grace period, accompanied with the applicable surcharge if paid within the grace period, WILL EXPIRE AS OF THE END OF THE GRACE PERIOD. 35 U.S.C. 41(b).

A PATENT EXPIRES AT THE END OF THE SAME DATE (ANNIVERSARY DATE) THE PATENT WAS GRANTED IN THE 4TH, 8TH, OR 12TH YEAR AFTER THE GRANT DEPENDING ON WHICH MAINTENANCE FEE WAS NOT PAID. 37 CFR 1.362(g).

THE PAYMENT DUE AS SET FORTH BELOW IS BASED ON THE SMALL ENTITY STATUS ACCORDING TO CURRENT OFFICE RECORDS.

TIMELY PAYMENT OF THE TOTAL FEE DUE IS REQUIRED IN ORDER TO AVOID EXPIRATION OF THE PATENT. NOTE 37 CFR 1.378.

PATENT NUMBER	MNT FEE AMT	SUR CHG	U.S. SERIAL NUMBER	PATENT DATE	APPLI- CATION FILE DATE	PAY- MENT YEAR	SMALL ENT- ITY ?	TOTL PAYM DUE	ATTORNEY DOCKET NUMBER
5714459	425	65	08484594	2/ 3/98	6/ 7/95	04	YES	490	OBRIEN.002DV

DOCKETED ON: SEP 24 2001  
BY: RS VERIFY BY: [Signature]  
ACTION: 3 1/2 YR. M/FEE W/ SURCHARGE  
DATE D/TE: FEBRUARY 3, 2002

FINAL DEADLINE: FEBRUARY 3, 2002  
ATTY: NAT  
ATTORNEY VERIFICATION OF DUE  
DATE AND FINAL DEADLINE: \_\_\_\_\_

DIRECT THE RESPONSE TOGETHER WITH A COPY OF THIS NOTICE, AND ANY QUESTIONS ABOUT THIS NOTICE TO:  
COMMISSIONER OF PATENTS AND TRADEMARKS, BOX M. FEE, WASHINGTON, D.C. 20231

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OCT 01 2001

KNOBBE, MARTENS  
OLSON & BEAR, LLP

**BIO-TECHNOLOGY GENERAL CORP.**

70 WOOD AVENUE SOUTH    TELEPHONE: 732-632-8800  
ISELIN, NEW JERSEY 08830    FACSIMILE: 732-632-8810

**ROBERT M. SHAW**  
Senior Vice President  
General Counsel & Secretary

Fax: 212-425-5288



October 11, 2001

Deborah Somerville, Esquire  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004

Re: Myelos

Dear Deborah:

Enclosed for your review are letters received from Knobbe Martens pertaining to various Myelos patent applications to which BTG has not yet responded.

Yours truly,

*Bob Shaw/cw*

Robert M. Shaw

RMS/cw

Enclosures



*Per*

#4

September 7, 2001

Robert Shaw  
Senior Vice President and General Counsel  
Bio-Technology General Corp.  
70 Wood Avenue South  
Iselin, NJ 08830

Re: **PAYMENT OF MAINTENANCE FEES**  
**USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDES DERIVED**  
**THEREFROM**  
U.S. Patent No. 5,714,459  
Issued: February 3, 1998  
Our Reference: MYELOS.002DV2

Dear Bob:

To maintain the above-identified patent, a maintenance fee payment must be submitted to the U.S. Patent and Trademark Office by February 3, 2002. Please note that failure to pay the maintenance fee will result in the abandonment of the U.S. Letters Patent.

If you want to extend the life of the above-identified patent for a further four years, please indicate by signing, dating, and marking the box on the enclosed copy of this letter and returning it to us, and we will proceed with payment of the fee and bill you accordingly. The total amount due is \$625, which includes both our service charge of \$200, as well as the government fee of \$425.

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909-781-9231





D. SOMERVILLE  
D.M. PRAISS  
E.M. WIECKOWSKI  
C.M. AGUAYO

P36803 US 3

Client Ref

Office NY

Title PROSAPOSIN AS A NEUROTROPHIC FACTOR

Prosecution Particulars

Prosecution Status **Live - Granted/Registered**  
Priority Claimed **08/100247** **30-Jul-1993** **United States**  
Parent **08/100247** **30-Jul-1993** **US**  
Application **08/484594** **07-Jun-1995** **United States**  
Filed on  
Publication  
Allowed  
Grant Fees Paid  
Grant **5714459** **03 Feb 1998**  
Expiry  
Agent **KENYON N.Y.**

Parties

Inventor **O'BRIEN, S. John**  
**KISHIMOTO, Yasuo**  
Reel/Frame **8933/0763**

Renewal Particulars

Renewal Status **Granted**  
Annuity **8**  
Next Due **03-Aug-2005**  
Next Cost **1010**  
Cost Restof Life **1550**

Comm Date	Communication / Action	Due Date	Last Date	Response Filed
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#6

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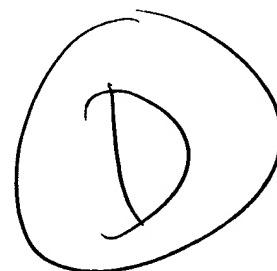
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**Laky, Teresa**

---

**From:** Laky, Teresa  
**Sent:** Tuesday, October 25, 2005 4:17 PM  
**To:** Peter Tu (ptu@savientpharma.com)  
**Cc:** Lavenue, Teresa  
**Subject:** Revocation and Power of Attorney - matter 46004.DOC  
**Attachments:** Revocation and Power of Attorney - matter 46004.pdf



Dear Peter,

Please sign and return the attached form and we will file it with the Patent Office.

Sincerely,

Teresa A. Laky  
Kenyon & Kenyon  
One Broadway  
New York, NY 10004  
ph: (212)908-6094  
fax: (212)425-5288  
e-mail: [tlaky@kenyon.com](mailto:tlaky@kenyon.com)

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PETER TU  
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[ptu@savientpharma.com](mailto:ptu@savientpharma.com)

October 31, 2005

Teresa A. Lavenue  
Kenyon & Kenyon  
1500 K Street, N.W., Suite 700  
Washington, DC 20005

Re: **U.S. Patent App. No. 08/484,594; Your Ref. 1234/46004**

Dear Teresa:

As requested, enclosed please find the executed original Power of Attorney for the above-identified patent application.

Please feel free to contact me should you have any questions.

Best regards,

A handwritten signature in black ink that reads "Peter Tu". The signature is written in a cursive, flowing style.

Peter Tu

Enclosure

PT/cp

A large, handwritten letter 'E' enclosed within a circle, drawn in black ink. The 'E' is stylized with a horizontal top bar and a curved bottom.

**U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE**

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
(REVOCATION OF PRIOR POWERS AND APPOINTMENT OF NEW POWER)**

Docket Number: **12346/46004** Filing Date: **June 7, 1995**  
Application Number: **08/484,594** Examiner: **Robert Hayes, Ph.D.**  
Inventor(s): **O'BRIEN et al.** Art Unit: **1645**

Invention Title: **PROSAPOSIN AS A NEUROTROPHIC FACTOR**

Address to:  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

As assignee of the entire interest of the above-identified application by virtue of executed Assignments, recorded in the U.S. Patent and Trademark Office on January 19, 1994 under Reel 006831, Frame 0748; on March 28, 1995 under Reel 007409, Frame 0430; on January 16, 1998, under Reel 008933, Frame 0763; and on June 16, 2000 under Reel 010919, Frame 0686, all powers of attorney previously given are hereby revoked and the following attorneys and/or agents are hereby appointed to prosecute and transact all business in the Patent and Trademark office connected therewith:

**Practitioners associated with the Customer Numbers 26646, 23838 and 49432.**

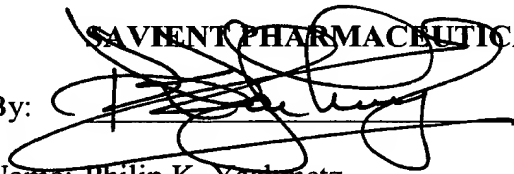
The following attorneys and/or agents are hereby appointed as attorneys of record for the above-identified application:

**Zeba Ali (Reg. No. 51,392)** **Lawrence P. Casson (Reg. No. 46,606)**  
**Teresa A. Laky (Reg. No. 55,352)** **Teresa A. Lavenue (Reg. No. 47,737)**  
**Deborah A. Somerville (Reg. No. 31,995)** **Peter Tu (Reg. No. 43,207)**

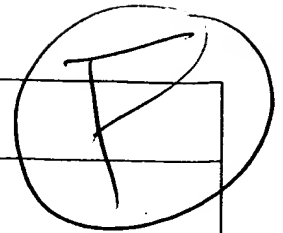
**SEND CORRESPONDENCE AND DIRECT TELEPHONE CALLS TO:**

Teresa A. Lavenue  
KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4258  
(202) 220-4201 fax

Date: Oct. 31, 2005

**SAVIENT PHARMACEUTICALS, INC.**  
By:   
Name: Philip K. Yachmetz  
Title: Senior Vice President, Corporate Strategy,  
& General Counsel

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE



<b>TRANSMITTAL LETTER</b>		Docket Number: <b>12346/46004</b>	
Application Number: <b>08/484,594</b>	Filing Date: <b>June 7, 1995</b>	Patent No.: <b>5,714,459</b>	Issue Date: <b>February 3, 1998</b>
Invention Title: <b>USE OF PROSAPOSIN AND NEUROTROPHIC PEPTIDES DERIVED THEREFROM</b>		Assignee: <b>Myelos Corporation</b>	

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Post Issue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on  
Date: November 9, 2005  
Signature: *Julie Forero*  
Julie Forero

Sir:

Transmitted herewith for filing in the above-identified patent is a new Power of Attorney By Assignee of Entire Interest (Revocation Of Prior Powers And Appointment Of New Power).

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or arising during the pendency of this application, or to credit any overpayment to the deposit account of **Kenyon & Kenyon**, deposit account number **11-0600**.

Dated: November 9, 2005

By: *Teresa A. Laky*  
Teresa A. Laky (Reg. No. 55,382)

**KENYON & KENYON**  
One Broadway  
New York, N.Y. 10004  
(212) 425-7200 (telephone)  
(212) 425-5288 (facsimile)



**U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE**

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
(REVOCATION OF PRIOR POWERS AND APPOINTMENT OF NEW POWER)**

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Application Number: **08/484,594** Examiner: **Robert Hayes, Ph.D.**  
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**SEND CORRESPONDENCE AND DIRECT TELEPHONE CALLS TO:**

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1500 K Street, N.W., Suite 700  
Washington, DC 20005  
(202) 220-4258  
(202) 220-4201 fax

Date: Oct. 31, 2005

By: 

**SAVIENT PHARMACEUTICALS, INC.**  
Name: Philip K. Yachmetz  
Title: Senior Vice President, Corporate Strategy,  
& General Counsel